

1                   **BEFORE THE FOREST PRACTICES APPEALS BOARD**  
2                   **STATE OF WASHINGTON**

3 **ALPINE LAKES PROTECTION )**  
4 **SOCIETY, )**           **FPAB NO. 92-31**  
5                   **Appellant, )**  
6                   **v. )**           **FINAL FINDINGS OF FACT,**  
7 **STATE OF WASHINGTON, )**           **CONCLUSIONS OF LAW,**  
8 **DEPARTMENT OF NATURAL )**           **AND ORDER**  
9 **RESOURCES; DEPARTMENT )**  
10 **OF ECOLOGY, FOREST )**  
11 **PRACTICES BOARD and PLUM )**  
12 **CREEK TIMBER CO., L.P., )**  
13                   **Respondents. )**

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13           This matter came on for hearing before the Forest Practices Appeals Board,  
14 William A. Harrison, Administrative Appeals Judge, presiding, and Board Members  
15 Norman L. Winn, Dr. Martin R. Kaatz, and Robert Quoidbach.

16           The matter is the appeal of a logging road approval classified as exempt from the State  
17 Environmental Policy Act.

18           Appearances were as follows: Michael Pierson, Attorney at Law, for Appellant;  
19 Janet E. Garrow and John W. Hempelmann, Attorneys at Law, for Respondent, Plum Creek  
20 Timber Company; Jonathan Gurish, Assistant Attorney General, for the State Department of  
21 Natural Resources and Forest Practices Board; Respondent State Department of Ecology did  
22 not appear.

23           The hearing was conducted at Seattle on April 14, 15, and 16, 1993. Gene Barker &  
24 Associates provided court reporting services.

25  
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Witnesses were sworn and testified. Exhibits were examined. From testimony heard and exhibits examined, the Forest Practices Appeals Board makes these

## FINDINGS OF FACT

I.

This matter concerns a proposal to build a logging road and to harvest timber near the Cle Elum River in Kittitas County. Because of the method employed in processing the forest practices application, we are unable to conclude that the proposal lacks potential for a substantial impact on the environment. Therefore we reverse and remand the matter to the Department of Natural Resources for further consideration.

## II.

Respondent Plum Creek Timber Company ("Plum Creek") owns a section of forest land known as Section 1, 23N, 14E. Plum Creek's Section 1 is surrounded on all sides by federal lands. The northern border of Section 1 adjoins the Alpine Lakes Wilderness Area. The eastern and southern borders adjoin the Teanaway Recreation Area which is managed principally for primitive recreation. The western border of Section 1 adjoins national forest. Plum Creek's land lies in an area of "checker-board" ownership in which alternating sections of land are public and private.

### III.

Since 1987 or before, appellant Alpine Lakes Protection Society has been urging federal acquisition of Plum Creek's Section 1. Land trading proposals have failed to carry through. Congress thus far has declined to make funds available to purchase the land.

## IV

On September 29, 1992, Plum Creek departed from the acquisition or trade discussions by filing an application to build its logging road into Section 1. That application was filed

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1 with the Washington State Department of Natural Resources (DNR). An earlier application  
2 approved by the DNR had authorized a road spur from the Cle Elum River road into  
3 Section 11, 23N., 14E. The application filed by Plum Creek in September, 1992, sought to  
4 extend that spur across Section 2, 23N. 14E and into Section 1. That is the application which  
5 is before us now  
6

7 V.

8 The U.S. Forest Service conducted an environmental analysis for the portion of the  
9 proposed road that crosses its land in Section 2. On March 6, 1989, the U.S.F.S. issued to  
10 Plum Creek Timber Company a categorical exclusion from documentation in either an  
11 environmental assessment or environmental impact statement. (Exhibit R-102).

12 VI.

13 Upon receipt of the application, DNR noted that the proposal called for "harvest on  
14 unstable slopes." The DNR then classified the application as "Class III - Priority" which  
15 exempted it from consideration under the State Environmental Policy Act, Chapter 43.21C  
16 RCW. The DNR did not convene an inter-disciplinary team pursuant to the cooperative  
17 provisions of the Timber, Fish and Wildlife Agreement.

18 VII.

19 The DNR forester in the area, Mr. Riggan, met with the Plum Creek forester,  
20 Mr. Yasny, at the site before acting on the application. No geologist or hydrologist was then  
21 consulted despite the DNR's notation of "harvest on unstable slopes." Mr. Riggan noted the  
22 route of the proposed logging road relative to Scatter Creek, a tributary of the Cle Elum River.  
23 He did not dig a soil pit to field verify the nature of the soil. Mr. Riggan incorrectly  
24 characterized some surfaces that were to be crossed by the eastern spur of the road as old burn  
25 areas. These surfaces are, in fact, avalanche chutes.

VIII.

Mr. Riggin, while reviewing the probable effects of the logging road at its end, in Section 1, did not consider effects at its beginning in Section 11 nor its middle in Section 2. Mr. Riggin did not walk or visit the portion of the proposed road on Section 2. Moreover, neither Mr. Riggin nor others at DNR documented the proposed timber harvest which the road was proposed to serve

IX.

On October 29, 1992, DNR approved Plum Creek's forest practice application. It did so with only these two conditions:

1. Provide road plan and profile for DNR approval prior to road construction.
2. Both forks of Scatter Creek will be treated as Type 3 waters (water type change in progress).

X.

The characteristics of the road that apply to slope stability or sediment production such as relief culvert placement, outslipping, fills and so forth were not determined or identified within the permit. Consequently those characteristics were missing at the time of permit approval, at the time thereafter for appeal and throughout appeal proceedings because the required road plan that is called for in the conditions set forth by the DNR in the permit is still unapproved. Neither the DNR, nor the appellant, nor the FPAB could determine the potential environmental consequences of the road construction by reviewing the information in the application and permit.

XI.

One potential impact of building a road on unstable slopes is that of soil movement into fish bearing streams downslope of the road. The permit's treatment of Scatter Creek as "Type 3 water" means that it is considered to be a fish bearing stream. See WAC 222-16-030(3).

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2 XII.

3 The predominant soils in Section 1 are Ronsel Gravel Loam and Sandy Loam on 45 to  
4 65% slopes. These are rated "stable" in natural conditions but "unstable" when disturbed.  
5 The predominant soil in Sections 11 and 2 is Wapatus Very Stony Sandy Loam on 45 to 65%  
6 slopes. These are rated "unstable" in natural conditions and "very unstable" when disturbed.

7 XIII.

8 Another road and harvest proposal by Plum Creek in Section 11 ("Fish Lake Mine"  
9 proposal) was classified as Class IV - Special by DNR and involved the same soil type as the  
10 proposed road within Sections 2 and 11.

11 XIV.

12 There is potential for harm to fish habitat when soil movement increases background  
13 levels of sedimentation by a factor of ten times. In this matter, evidence was presented by the  
14 appellant to the effect that background sediment levels were from 5 - 11 tons per year, and that  
15 if this road is built the sediment would increase to 3,600 tons per year. This represents an  
16 increase by a factor of approximately 360 times. We do not find this evidence to be credible.  
17 Furthermore, this data is derived from extrapolation of research conducted in an area with  
18 distinctly different climatic conditions. Respondent Plum Creek offered its own sedimentation  
19 analysis showing background sediment levels of 20 tonnes (metric) per square kilometer per  
20 year, and that if this road is built, the sediment would increase to 21.2 tonnes (metric) per  
21 square kilometer per year. This is a marginal increase of only 5% - 6%. Yet this analysis  
22 misstates the apparent road density and other factors. We therefore do not find it credible  
23 either.

24 XV.

25 Based upon the total weight of the evidence, we conclude that the magnitude of  
26 increased sedimentation from the proposed road in the absence of suitable mitigation, probably

1 exceeds the ten fold level of concern. The proposal has the potential to harm fish habitat by  
2 soil movement to streams.  
3

4 XVI.

5 On the eastern spur of the road it is probable that snow avalanches will cross the  
6 proposed road. Whether the snow will merely pass over to top of the road or dislodge it  
7 depends on road design. Fill on the outer slope would increase the danger of road damage and  
8 soil movement to streams.

9 XVII.

10 Any Conclusion of Law deemed to a Finding of Fact is hereby adopted as such. From  
11 these Findings of Fact, the Board issues these:

12 CONCLUSIONS OF LAW

13 I.

14 The principal issue in this appeal is whether Plum Creek's application should have been  
15 classified by DNR as Class IV - Special, and therefore as subject to review under the State  
16 Environmental Policy Act, (SEPA), Chapter 43.21B. We conclude that it should have been so  
17 classified and remand it for that purpose.

18 II.

19 The Forest Practices Act provides for four classes of forest practices. RCW  
20 76.09.050. Forest practices include both construction of a logging road and the harvest of  
21 timber. RCW 76.09.020(8). Forest practices classified as I, II, or III are exempt from the  
22 requirements for preparation of an environmental impact statement and related documents  
23 under SEPA. RCW 76.09.050. Forest practices which, however, have a "potential for a  
24 substantial impact on the environment" are classified as Class IV, and require SEPA review.

25 Id.

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III.

The proposed road is on steep slopes and unstable soils on hillsides above fish bearing streams. It is proposed to cross avalanche chutes which further raise the danger of soil slippage to streams. The proposed road is within the following description of a Class IV - Special forest practice:

Construction of roads, landings, rock quarries, gravel pits, borrow pits and spoil disposal areas on slide prone areas as defined in WAC 222-24-020(6) and field verified by the department, in a watershed administrative unit that has not undergone a watershed analysis under Chapter 222-22 WAC, when such slide prone areas occur on an uninterrupted slope above a water typed pursuant to WAC 222-16-030, Type A or Type B Wetland or capital improvement of the state or its political subdivisions where there is a potential for a substantial debris flow or mass failure to cause significant impact to public resources.  
(Emphasis added.) WAC 222-16-050(d).

The reference in the above to WAC 222-24-020(6) is a reference to "excessively steep or unstable slopes." The field verification work done by DNR's forester did not eliminate these slopes from the unstable category established by soil mapping. The evidence presented is persuasive that there exists a potential for a substantial impact on streams and fish. Streams and fish are public resources. RCW 76.09.020(13). The proposed logging road is a Class IV Special forest practice under WAC 222-16-050(d) and should be remanded for SEPA review.

IV.

On remand for SEPA review, DNR must not consider only the end of the logging road but also the beginning and middle, as well as the timber harvest for which the road is being built. In briefing, DNR has urged that the Forest Practices Act allows an applicant to submit an application for a single forest practice or a number of forest practices. RCW 76.09.060(6). That is so. Yet the State Environmental Policy Act does not permit environmental review to

1 proceed on the same segmented basis. Merkel v Port of Brownsville, 8 Wn. App. 844  
2 (1973). That is why we held that  
3

4 *The Department cannot only look to the four corners of the application in*  
5 *determining what constitutes its environmental impact. Pilchuck Audubon*

6 *FPAB No. 92-7 (1992).*

7 To do so inevitably results in seeing no environmental impact from each application while the  
8 cumulative effect of all applications may adversely affect an entire area such as a watershed or  
9 basin.

10 V

11 In this case, the Department of Natural Resources looked only within the four corners  
12 of an application for the end of the logging road. In doing so it failed to comply with rules for  
13 determining whether there is a potential for a substantial impact on the environment. As set  
14 forth in Seattle Audubon Society v Department of Natural Resources and Scott paper  
15 Company, FPAB No. 87-5 (1989)

16 *Under WAC 197-11-060(3)(b)(i) or (ii) of the SEPA rules both harvest and*  
17 *transportation should have been discussed in the same environmental checklist*  
18 *and threshold determination and now should be addressed in the same*  
19 *environmental impact statement.*

20 We referred there, by footnote, to WAC 197-11-305, also. That provides that SEPA  
21 categorical exemptions do not apply when there is:

22 *A series of exempt actions that are physically or functionally related to each*  
23 *other, and together may have a probable significant adverse environmental*  
24 *impact in the judgment of an agency with jurisdiction.*

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2 Thus, whether the beginning, middle and end of a logging road leading to a timber harvest  
3 would present four exempt actions if viewed separately is not the point. Here the logging  
4 road--beginning, middle and end--depends for its existence upon the harvesting of timber. The  
5 timber harvest depends on the road. The impacts of this road building and timber harvest must  
6 be considered together. See also Save the Yaak v. Peterson, 840 F.2d 714 (9th Cir., 1988)  
7 and Thomas v. Peterson, 735 F.2d 754 (9th Cir., 1985) treating similarly the federal  
8 consideration of logging roads and timber harvest under the National Environmental Policy  
9 Act.

#### 10 VI.

11 In Seattle Audubon, supra, there had been a determination by DNR to exercise SEPA  
12 review. Here there has been a determination to withhold SEPA review on grounds of  
13 exemption. The consideration of cumulative impacts under WAC 197-11-060 applies here as  
14 well as in Seattle Audubon. Under the terms of that rule, it applies to all "environmental  
15 documents" required under SEPA. Because the forest practices SEPA exemption stems from  
16 SEPA, RCW 43.21C.037, the DNR exemption determination on the forest practices  
17 application is an "environmental document." See WAC 197-11-744. Cumulative impact is  
18 important in a forest practices exemption case because the exemption can only stand where  
19 there is not even "the potential for a substantial impact on the environment."  
20 RCW 76.09.050.

#### 21 VII.

22 Further, the "related actions" rule of WAC 197-11-305 is similarly essential to an  
23 exemption determination. If related forest practices have the potential for a substantial impact  
24 on the environment, they cannot find shelter in the statutory exemption which is available only  
25 to forest practices without that potential. RCW 76.09.050 and RCW 43.21C.037.

VIII.

Applying the "cumulative impacts" and "related actions" rules to the facts of this case. DNR should consider the entire logging road through Sections 11, 2 and 1, as well as the timber harvest to be served by the road. That was so originally when DNR made its SEPA exemption determination. The same breadth of action should now be considered on remand in applying SEPA review.

IX.

The DNR cites language from Snohomish County v. Department of Natural Resources and TAT (USA), FPAB Nos. 89-12 and 89-13 ("Lake Roesiger") that held it unnecessary for DNR to assess future forest practices where an application had not yet been filed. That case is distinguishable because it involved successive harvests which were independent from one another and which involved impacts that were then difficult to assess. This justified phased review. See Cathcart v. Snohomish County, 91 Wn.2d 201 (1981) and Cheney v Mountlake Terrace, 87 Wn.2d 338 (1976). Here, the logging road is dependent for its justification upon the timber harvest, and the consequences of the ultimate road and harvest can be assessed. While Plum Creek need not file an application for timber harvest, it must document its intended harvest plans for consideration by DNR in conjunction with its logging road application.

X.

As in the Lake Roesiger case:

*The impact of these proposed operations on water quality, wildlife and other elements of the environment should be assessed in light of previous forest operations. The "effects or consequences of actions" proposed in present applications may intensify when added to actions already approved. Nothing in SEPA or the Forest Practices Act compels DNR to consider the forest practice application in isolation from previously approved applications in the same vicinity.*

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2 In this case, the effect on the Cle Elum River of this proposal at Scatter Creek should be  
3 considered along with forest practices approved previously, e.g. "Fish Lake Mine" and  
4 "Fortune Creek." The concern should be for the greater watershed of the Cle Elum River. As  
5 one creek is logged, that logging must be considered in reviewing an application for the next  
6 and subsequent creeks throughout the basin of the Cle Elum River.

7 XI.

8 Neither may effects be ignored which occur on federal lands outside DNR licensing  
9 jurisdiction. Because of checker-board ownership, this road crosses federal land. Nearby  
10 logging at Fortune Creek may affect the Cle Elum River even though on federal lands. Each  
11 of these impacts should be considered by DNR, whose powers and responsibilities for  
12 environmental review are not limited to its licensing jurisdiction. Pilchuck Audubon, supra,  
13 Calvert Cliffs Coordinating Committee v Atomic Energy Commission, 146 U. S. App. D.C.  
14 33, 449 F.2d 1109 (1970); Save v Bothell, 89 Wn.2d 862, 871-872, 576 P.2d 401 (1978);  
15 and WAC 197-11-060(b).

16 XII.

17 Under the Forest Practices Act each significant forest practice requires an application to  
18 DNR. RCW 76.09.050. Under that scheme, the forest practices which are approved must  
19 appear on the face of the application itself. It is from this approved application that the public,  
20 interested agencies, and on review, this Board may assess the consistency of the approved  
21 forest practices with governing laws. See Hayes v Yount, 87 Wn.2d 280, 522 P.2d 1038  
22 (1976). In this instance, the approved application contained a condition (No. 1) which  
23 postponed a description of the approved road until a later time. That condition called for the  
24 road plan to be approved by the DNR forester after the permit had already been approved.  
25 The effect of this is to eliminate the public and other interested agencies from the review

1 process. No one can determine the characteristics of the road which was approved. In effect,  
2 the DNR forester is granted decision making power which is unreviewable by the appeals  
3 process. On remand, and in the future, each approved forest practices application must  
4 describe on its face or in conditions, the approved forest practices. In the case of a road on  
5 unstable slopes, a complete road profile may not be needed but the road's characteristics which  
6 mitigate the risk of sedimentation must be set forth through conditioning or through  
7 incorporation of existing plans. An approved application may be vacated which, at the time  
8 of approval, is not specific enough to allow a determination of its lawfulness. See, Hayes,  
9 supra, at p. 295-6. which states as follows regarding the parallel provisions of the Shoreline  
10 Management Act:

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12 *Under the Shoreline Management Act of 1971, the scope and extent of*  
13 *authorized uses is defined only by the contents of the development permit itself.*  
14 *Effective operation of the permit review process, as well as enforcement of the*  
15 *act, see RCW 90.58.210-.230, demands that shoreline permits be complete in*  
16 *themselves and contain sufficient detail to enable the local government and the*  
17 *board to determine consistency with the policy of preferred water-dependent*  
18 *uses and other policies set forth in RCW 90.58.020 and the supplementing*  
19 *regulations . . . The Board did not err in vacating the substantial development*  
20 *permit on this ground.*

### 21 XIII.

22 An inter-disciplinary team (I. D. Team) of experts and others having different  
23 disciplines and viewpoints, is the creation of the cooperative Timber-Fish-Wildlife  
24 (T-F-W) Agreement. That agreement does not have the force of law. Friends of the White  
25 Salmon v. Department of Natural Resources, FPAB Nos. 89-18 and 90-1 (1991). No I.D.  
26 Team was therefore required. As we stated in Snohomish (Lake Roesiger), supra, at p. 35:

27 *. . . we see no compelling reason why the T-F-W process cannot aid in DNR's*  
*determination of whether an application has a potential for a substantial impact*  
*on the environment.*

1 An I. D. Team would have been helpful, even though not required.  
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3 XIV.

4 Because existing regulations, WAC 222-16-050(d), subject this application to SEPA  
5 review, we need not reach the issue of whether those regulations would be misapplied if the  
6 result were otherwise. Neither is it necessary to reach the issue of our jurisdiction in that area  
7 in this case.

8 XV.

9 In summary, we hold that this application for a logging road has a potential for a  
10 substantial impact on the environment. It is a Class IV - Special application which must be  
11 remanded to DNR for an evaluation as to whether or not a detailed statement must be prepared  
12 pursuant to SEPA. RCW 76.09.050. On remand, DNR should consider the entire road and  
13 timber harvesting proposal. These should be considered for cumulative effect together with  
14 past forest practices in the Cle Elum River Basin. Any forest practices which may be  
15 approved as a result of the remand must be specific enough to allow a determination of  
16 lawfulness when the application is approved.

17 XVI.

18 Finally, the classification of this or any other application as Class IV - Special should  
19 not be taken as tantamount to denial or even the need of an environmental impact statement.  
20 This remand is to determine whether or not an impact statement is needed.

21 We express no opinion as to what the outcome should be. In arriving at this decision  
22 we express no criticism of Plum Creek which acted in good faith and supplied all information  
23 requested by the DNR.

24 The threshold decision must follow the submission by Plum Creek of an environmental  
25 checklist for its road and harvest at Scatter Creek. In that sense, the process is the same as for

1 Plum Creek's recent road and harvest proposal ("Fish Lake Mine") at nearby Silver Creek.  
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3 The final approval or disapproval of the Scatter Creek proposal is still in store.

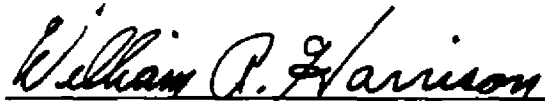
4 XVII.

5 Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such.  
6 From the foregoing, the Board issues this:  
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ORDER

The approval granted by the State Department of Natural Resources to Plum Creek Timber Company is hereby reversed. The matter is remanded for determination of whether or not a detailed statement must be prepared pursuant to the State Environmental Policy Act, Chapter 43.21C RCW

Done at Lacey, WA this 17<sup>th</sup> day of May, 1993.



Honorable William A. Harrison  
Administrative Appeals Judge

FOREST PRACTICES APPEALS BOARD

  
NORMAN L. WINN, Chairman

  
DR. MARTIN R. KAATZ, Member

  
ROBERT QUOIDBACH, Member